IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 1222 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

V U TRIVEDI,SUPDT. OF CUSTOMS

Versus

2. AMBALAL DEVJI MANGELA

Appearance:

MR AKSHAY MEHTA for Petitioner

MR DEEPAK M SHAH for Respondent No. 1

MR ST MEHTA Ld. APP for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/09/2000

ORAL JUDGEMENT

This revision application has been preferred by the prosecution against the sentence imposed upon the accused-respondents in Criminal Case No. 15/1982 by the learned Additional Chief Judicial Magistrate, Valsad.

On 21st April, 1980 while on patrol duty the Custom Inspector , Vapi one Shri D.M. Patel and his staff raided vessel named "Jamnaprasad" near Nargol-Maroli Shore. Upon inspection, contraband foreign goods like synthetic clothes, watches, tape-recorders, radios, perfumes etc. worth Rs. 9,03,646/ was found on the vessel. The said goods were confiscated by the Customs Officers after making panchnama on 21/22.4.1980. The ship was also confiscated. Pursuant to the said incident, an offence punishable under sec. 135 of the Customs Act, 1962 (Hereinafter referred to as "The Customs Act") was registered against the eight persons, the respondents herein. The said eight accused were tried in Criminal Case No. 15/1982 by the learned Additional Chief Judicial Magistrate, Valsad. By his judgment and order dated 30th July, 1983, the learned Magistrate found the accused guilty of the offence alleged and accordingly ordered conviction of all the accused. After hearing the accused, accused no. 1, the owner of the vessel and the contraband articles, was sentenced to R/I for 4 years and a fine of Rs. 4000/, in default of payment of fine, R/I for six months was imposed. The accused no. 2, the Captain was sentenced with R/I for one year and a fine of Rs. 500/, in default of payment of fine, R/I for 3 months was imposed. The accused nos. 3 to 8 were sentenced with R/I for 9 months and and a fine of Rs. 250/, in default of payment of fine, R/I for 3 months was imposed. Feeling aggrieved, the prosecution has preferred present revision against the accused nos. 2 to 8.

The respondents no. 1,4,5 and 7 have not been served and accordingly their names have been ordered to be deleted by order dated 28th March, 1989. The Revision, thus, survives against respondents no. 2,3 and 6 i.e. Accused nos. 3,4 and 7 alone.

Mr. Mehta has submitted that if the contraband goods confiscated were worth more than Rs. 1 lakh, in that case, Section 135 of the Customs Act makes the offence punishable with imprisonment for a term which may extend to seven years and with fine and in absence of special and adequate reasons to the contrary to be recorded in the judgment, such imprisonment shall not be less than three years. He has submitted that no special circumstance existed which would warrant a sentence of

imprisonment for less than three years. The sentence imposed upon the accused nos. 2 to 8 is therefore, inadequate and contrary to statute and requires to be enhanced. He has relied upon the judgment of this Court in the matter of State vs. Ravindra Thakiya, (1977 GLR 346). In the said case, the accused were found to be guilty of offence punishable under sec. 135 of the Customs Act since contraband articles valued at more than Rs. 6,14,000/ were seized from their vessel. Each of the accused was sentenced to suffer R/I for one year. In respect of sentence imposed upon the accused, the learned Judge observed that "in my opinion, the sentence is unduly lenient and grossly inadequate. An offence has been committed in relation to contraband goods which at the time of seizure in April, 1974 were valued at Rs. 6,14,450/. If a sentence of only one year's imprisonment is awarded in such cases, the offenders would not be deterred from committing such offences in future. So also persons who are like-minded will also not be deterred from committing such offences. In the first place they may not be caught at all. They would take the chance of succeeding in their smuggling operations with impunity. In case they are apprehended, then they can escape with a sentence of one year which in practice would turn out to be for a smaller period taking into account the deductions to which they would be entitled under the relevant rules. Smuggling offences deserve to be dealt with with due degree of seriousness and gravity having regard to their detrimental effect on the economy of the nation as also the morale of the society. If a lenient view is taken of such offences, it would be difficult to maintain ethical standards and it would be difficult to maintain respect of the people for the judicial administration. .....In these circumstances, it is but right to view these offences with gravity and to impose a sentence without being carried away by considerations of misplaced sympathy or charity at the cost of the society and at the cost of the detrimental effect on the social structure and the national economy. These are the offences where the deterrent theory of punishment has its justification and the sentence imposed must be made sufficiently deterrent." Same is the view expressed by this Court in the matters of State of Gujarat vs. Hasam Ali Shorat & Ors., (1976, (17) GLR 79) and of State of Gujarat vs. Manharlal Ambalal Soni, (1976 (17) GLR, 427).

In the present case, the accused were found to be in possession of contraband goods worth more than Rs. 9 lacs and they were, therefore, liable to be punished

under clause (i) & (ii) of sub-section(1) of Section 135 of the Customs Act, with imprisonment for a term which may extend to seven years. Proviso to the said clause provides that in absence of special and adequate reasons to the contrary to be recorded in the judgment, such imprisonment shall not be less than one year (as prevalent on the date of the offence). In the present case, the only special circumstance or the reasons recorded for the lesser punishment is that the accused nos. 2 to 8 were not the principal offenders and that if they were sentenced with imprisonment for a long period, their families would suffer hardship. I am afraid that this can hardly be a special reason for which a punishment lesser than the minimum prescribed under the Statute can be imposed. Sub-section (3) of Section 135 of the Customs Act provides for circumstance which shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than one year. Clause (i), (ii), (iii) & (iv) thereof read as under:

i) the fact that the accused has been convicted for the first time for an offence under this Act;

ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused;

I am of the opinion that the accused nos. 2 to 8 have been awarded lesser punishment out of sympathy. Such consideration has been deprecated by this Court in the judgment referred to hereinabove. I am of the view that the learned Magistrate has erred in awarding lesser punishment to the accused nos. 2 to 8 out of misplaced sympathy.

The accused having committed an economic offence which has long lasting detrimental effect on the national economy and the society, deserved harsher punishment which should have deterrent effect not only upon the

accused but also on all like minded people. The fact that they were not the principal offenders or that they were young people could not have been the reason for awarding lesser punishment. That is exactly what the legislature has expressly forbidden.

However, in view of the passage of time, I consider it expedient to impose punishment not longer than the minimum prescribed under the Statute. The order of sentence imposed upon the Accused no. 3 Ambalal Devji Mangela, Accused no. 4-Mohan Ranchhod Koli and Accused no. 7-Ganpat Soma Mitha,is enhanced and they are ordered to be sentenced with R/I for one year. The sentence as regard to fine and imprisonment in default of fine, is confirmed.

This revision application is allowed to the above extent. Rule is made absolute.

(Ms. R.M. DOSHIT, J.)
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